

Department of Natural Resources and Conservation
Position: Oppose

Mr. Chairman and members of the committee, my name is Brian Bramblett. I am an attorney with the Department of Natural Resources and Conservation (DNRC). DNRC opposes Senate Bill 286 as further explained below.

DNRC authority and responsibilities for management of Montana's natural resources and state lands include constitutional and statutory mandates to protect public health, safety, and general welfare; and, to provide for the conservation and development of Montana's natural resources for the benefit of current and future generations of Montanans. DNRC responsibilities include, but are not limited to:

- Water Resources Division (WRD) – water resource management, water right permit and change application review, floodplain regulation and enforcement, and dam safety;
- Trust Land Management Division (TLMD) – surface resource management of 5.2 million acres of school trust lands; and, mineral estate management on 6.2 million acres school trust and state lands;
- Forestry Division – direct fire protection on 5.2 million acres in Montana (including 3.5 million acres of state and private lands and 1.7 million acres of federal lands); and, providing forestry management and grant assistance;
- Conservation and Resource Development Division (CARDD) – administering grants for private irrigation development, grants for private water development projects, range improvement loans and renewable resource loans for private entities, and providing assistance to conservation districts; and
- providing assistance for numerous other programs related to rangeland, grazing, timber, water resources, and fire management.

Administrative rules adopted by DNRC in the above areas serve to assist the agency in executing its responsibilities while providing guidance and predictability for Montana citizens with real property or business interests potentially implicated by DNRC natural resource management activities.

Section 1(1)(a) prohibits DNRC from adopting any rule that will burden a person's ability to enjoy a property right. The term "burden" is not defined and appears to mean that a rule which places *any* burden on a person's property right would be prohibited, regardless of whether the burden is reasonable or consistent with DNRC's resource management and public health, safety, and general welfare responsibilities.

The term "enjoy" is not defined, but generally means to take pleasure in, or, to have for one's use or benefit. The term "property" means a "thing of which there may be ownership" (see 70-1-101, MCA). As used in Section 1(1)(a), a "property right" includes the right to possess, use or dispose of any "thing" – regardless of its value, or whether it is real property or personal property. Therefore, enjoyment of a property right could include any incidental benefit, expectation, or pleasure a person subjectively has in any "thing" he or she owns.

Section 1(1)(b) prohibits DNRC from adopting a rule that will burden a person's ability to engage in any current or prospective business or occupation regardless of whether the burden is reasonable or consistent with DNRC's resource management and public health, safety, and general welfare responsibilities.

Section 1(1)(a) and (b) will have broad and significant impacts on DNRC ability to conduct rulemaking. For example, SB 286 would prohibit adoption of any new as well as the amendment or repeal of any existing rule:

- regarding floodplain delineation, permit requirements, and construction of flood control works, or dam safety classifications, permits, and enforcement because it could be construed as burdening enjoyment of a right in real property;
- regarding water use permits or change authorizations because it could be construed as burdening enjoyment of a right in real property or ability to engage in a lawful business;

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- establishing an administrative basin closure, stream depletion zone, or controlled ground water area (85-2-319, 85-2-380, and 85-2-506, MCA), because it could be construed as burdening enjoyment of a right in real property or ability to engage in a lawful business;
- regarding use of school trust lands for recreation, grazing, timber harvest, or rights-of-way because it could be construed as a burden on a person's ability to enjoy real property or personal property or engage in a lawful business; and
- regarding classification of forest lands, timber harvest standards, or fire protection restrictions because it could be construed as a burden on a person's ability to enjoy real property or personal property or engage in a lawful business.

SB 286 is vague, overbroad, and will prohibit DNRC from conducting most rulemaking activity pertaining to its extensive water, land, timber, and fire management responsibilities. The rulemaking prohibition in SB 286 will impede the agency's ability to protect public health, safety and welfare, and the ability to provide for the conservation and development of Montana's natural resources to benefit current and future generations of Montanans.

DNRC requests a "no" vote on SB 286.